

FILED BY CLERK

DEC 13 2007

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

MICHAEL W. TONEY,

Plaintiff/Appellant,

v.

CITY OF TUCSON; THE RIO NUEVO
MULTIPURPOSE FACILITIES
DISTRICT; and THE UNIVERSITY OF
ARIZONA,

Defendants/Appellees.

) 2 CA-CV 2007-0054

) DEPARTMENT A

) MEMORANDUM DECISION

) Not for Publication

) Rule 28, Rules of Civil

) Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C-20065741

Honorable Deborah Bernini, Judge

DISMISSED

Michael W. Toney

Tucson
In Propria Persona

Michael G. Rankin, Tucson City Attorney
By David L. Deibel

Tucson
Attorneys for Defendant/Appellee
City of Tucson

Ballard, Spahr, Andrews & Ingersoll, LLP
By William A. Hicks, III

Phoenix
Attorneys for Defendant/Appellee
Rio Nuevo Multipurpose Facilities District

University of Arizona Office of General
Counsel

By David H. Nix

Tucson
Attorneys for Defendant/Appellee
University of Arizona

H O W A R D, Presiding Judge.

¶1 Appellant Michael Toney challenges the trial court’s judgment dismissing his action against appellees City of Tucson, the Rio Nuevo Multipurpose Facilities District, and the University of Arizona (“appellees”) for lack of standing. Because Toney’s brief fails to comply with the Arizona Rules of Civil Appellate Procedure, we dismiss this appeal.

¶2 Toney sued appellees, alleging they had violated certain legal requirements when they entered into an intergovernmental agreement pertaining to the building of a new science center. The only relief Toney requests in his complaint is the cancellation of the “Science Center Project.” Because Toney himself is not affiliated with any party to the agreement at issue, appellees moved to dismiss for lack of standing. The trial court granted their motion, and Toney now appeals.

¶3 This court may dismiss an appeal when the appellant fails to comply with the Rules of Civil Appellate Procedure. *See Adams v. Valley Nat’l Bank of Ariz.*, 139 Ariz. 340, 342-43, 678 P.2d 525, 527-28 (App. 1984). And Arizona courts have consistently held that pro se litigants are entitled to “no more consideration” than parties represented by counsel. *Kelly v. NationsBanc Mortgage Corp.*, 199 Ariz. 284, ¶ 16, 17 P.3d 790, 793

(App. 2000); *see also Copper State Bank v. Saggio*, 139 Ariz. 438, 441, 679 P.2d 84, 87 (App. 1983).

¶4 Toney’s opening brief fails to comply in any meaningful way with Rule 13(a), Ariz. R. Civ. App. P. Specifically, Rule 13(a)(4) requires a “statement of facts relevant to the issues presented for review, with appropriate references to the record.” Rule 13(a)(5) requires a “statement of the issues presented for review.” Rule 13(a)(6) requires a section for argument setting forth the appellant’s contentions “with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.” Finally, all parts of the brief are to be set forth “concisely and clearly.” Ariz. R. Civ. App. P. 13(a).

¶5 In his opening brief, Toney does not provide either a statement of facts or issues. Rather, he refers us, without proper citation, to his original complaint and a later amendment of pleading and asks that we review these documents for the relevant facts and issues. The argument section of Toney’s brief is neither concise nor clear. It appears that he is trying to argue both the issue of standing as well as the merits of his complaint, and the two issues are conflated throughout the brief. Toney does not identify any standard of review,¹ and his citations to authority and to the record are sporadic and incomplete.

¹On page four of Toney’s opening brief is a subheading that reads “Standard of Review,” but the text that follows does not include any standard of appellate review.

Further, he raises issues that were not raised below and seeks to introduce evidence that was not presented below.

¶6 The deficiencies in this brief are too great for us to ignore. *See Adams*, 139 Ariz. at 342, 678 P.2d at 527 (“there is a limit to which judicial leniency can be stretched” when reviewing deficient briefs). These are not mere technical deficiencies; rather, Toney has completely failed to comply even minimally with Rules 13(a)(4) and (a)(5). *See Clemens v. Clark*, 101 Ariz. 413, 414, 420 P.2d 284, 285 (1966) (“The failure . . . to comply with [the predecessor to Rule 13(a)(4)] would ordinarily be regarded by this Court as sufficient cause for dismissal.”); *Bird v. State ex rel. Corbin*, 170 Ariz. 20, 24, 821 P.2d 287, 291 (App. 1991) (counsel for appellant risks dismissal by failing to comply with Rule 13(a)(4)).

¶7 Moreover, even if we were to overlook the many defects in Toney’s brief, we observe that Toney would lose on the merits of the standing issue. A review of the record shows that he based his theory of standing below on his status as a taxpayer. In his brief on appeal, Toney also discusses the issue of standing as a taxpayer. But to have standing as a taxpayer, Toney was required to show as a threshold matter that he in fact paid taxes or was liable to pay taxes as a resident of the relevant municipality. *See Tucson Cmty. Dev. & Design Ctr., Inc. v. City of Tucson*, 131 Ariz. 454, 456, 641 P.2d 1298, 1300 (App. 1982). Neither Toney’s complaint nor his response to appellees’ motion to dismiss contains such an allegation. And his affidavit requesting a waiver of the filing fees below showed that he

has no income, no expenses, and no property. And the inadequacy of his brief precludes us from proceeding, as he requests, based on the claimed public importance of the issue.²

¶8 Because Toney's brief does not comply with the Rules of Civil Appellate Procedure, we therefore dismiss this appeal.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

J. WILLIAM BRAMMER, JR., Judge

²To the extent Toney relies on A.R.S. § 35-213 to establish standing here, he did not bring that statute to the trial court's attention before it ruled, and we will not consider it here. See *Schurgin v. Amfac Elec. Distrib. Corp.*, 182 Ariz. 187, 190, 894 P.2d 730, 733 (App. 1995); *Brookover v. Roberts Enters., Inc.*, 215 Ariz. 52, n.1, 156 P.3d 1157, 1162 n.1 (App. 2007). In any event, the record does not indicate that Toney complied with the requirements of the statute.